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10/027,073	12/20/2001	William C. Dengler	2824/1	9825

7590 11/19/2003  
Adams, Schwartz & Evans, P.A.  
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EXAMINER

BLECK, CAROLYN M

ART UNIT PAPER NUMBER

3626

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/027,073

Applicant(s)

DENGLER, WILLIAM C.

Examiner

Carolyn M Bleck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-26 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-26 and 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is response to the amendment filed 25 September 2003. Claims 14-26 and 29-32 are pending. Claims 1-13 and 27-28 have been cancelled. Claims 29-32 are newly added. Claims 14 and 16 have been amended.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 14-26 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) in view of Detjen et al. (5,970,466) and Joao (6,283,761).

(A) As per claims 14-15, 21-23, and 26, Evans discloses an electronic medical records system for storage and retrieval of electronic medical records in a computer environment, such as a local or wider area network including portable computers (Abstract; col. 1 lines 5-10) comprising:

(a) a medical records system (Abstract) including:

(i) a patient data repository in communication with a point of care system to store and organize the patient data for access by the point of care system, wherein the patient data repository comprises a server computer having access to patient data stored in a relational database that accepts SQL data queries, wherein the point of care system captures patient data at a point of care by health care providers such as physicians or nurse practitioners from patients and communicates the patient data to the patient data repository (Fig. 1, 24, col. 2 lines 44-64, col. 12 line 55 to col. 14 line 25, and col. 16 lines 1-53);

(ii) an input device such as keyboard, a mouse, or an electronic pen, for permitting a health care provider to enter, access, process, analyze, and annotate data from patient records in real-time at the point of care (col. 5 lines 1-28 and col. 7 lines 5-40);

(iii) desktop computers, laptop computers, or wireless pen computers communicating through the world wide web portion of the Internet, WAN, or LAN (reads on "global communications network") with the patient data repository or database on the server for providing instant access to a patient's electronic medical record by authorized healthcare providers from any geographical location in order to analyze patient information to identify medication interactions and allergies and to enter patient diagnoses, procedure codes, and the administration of treatments (col. 5 lines 29-55, col. 11 lines 36-64, col. 12 line 55 to col. 14 line 25, and col. 14 line 42 to col. 15 line 32); and

(iv) a graphical user interface to present and view patient data and touch screens to the enter patient data at the point of care (col. 5 line 55 to col. 6 line 9, col. 6 lines 36-55, col. 11 lines 30-35, and col. 14 lines 62-65);

(b) capturing patient data electronically at the point of care by health care providers such as physicians or nurse practitioners (col. 2 lines 50-55 and col. 18 line 45);

(c) entering, accessing, processing, analyzing, and annotating data from patient records in real-time at the point of care using an input device such as keyboard, a mouse, or an electronic pen, by a health care provider into the patient data repository (Fig. 1 and 24, col. 5 line 1-28, and col. 7 lines 5-40);

(d) using database software such as Microsoft Access to organize and store data on a server, wherein the data includes appointment data, laboratory test results and x-ray images, prescription information, wherein the data is transferred to medical providers and used by the providers to assist in making diagnosis and administering treatments, and wherein the data is updated using the progress notes (col. 5 line 64 to col. 6 line 55, col. 12 line 55 to col. 14 line 25 and col. 16 lines 35-44); and

(e) communicating with the patient data capture practice guidelines regarding courses of action to obtain a diagnosis and alternative treatments for various conditions to the health care provider (col. 5 lines 1-28, col. 7 lines 40-64).

Evans fails to expressly disclose using software downloaded to a server.

Detjen discloses downloading programs over the Internet to a computer (col. 3 lines 25-65).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include the features of Detjen within the system of Evans with the motivation of easily and efficiently installing software programs on computers of a network, thus increasing the ease of use for users of the software.

As per the newly added recitations of "creating a plan of care, said plan of care comprising information specifying at least one diagnostic test selected to identify said selected medical condition and scheduling information relating to the diagnostic tests," "communicating the plan of care to the requesting party," "receiving the results of said diagnostic tests in accordance with said plan of care, and storing said results in said database," and "creating a summary of said results for use by a health care provider in selecting a treatment track for treatment of said medical condition based on said test results, and storing said summary in said database," Evans does not expressly disclose these steps. Although as noted above in sections (a)-(e), Evans suggests storing data related to laboratory tests used to make diagnoses and administer treatments.

Joao discloses a processor for processing symptom information and condition information corresponding to a patient, in conjunction with healthcare information, including data from pulse rate monitors, blood pressure monitors, electrocardiograms, blood-sugar monitors, and scheduled appointments, to generate a diagnostic report and a treatment report, wherein the diagnostic report contains information regarding at least one of symptom information and condition information, and wherein said treatment report contains information regarding a treatment for the diagnosis (col. 16 lines 38-65, col. 17 lines 1-12, col. 18 line 66 to col. 19 line 53, col. 20 lines 51-67, col. 24 lines 21-

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32, col. 26 lines 7-19, col. 32 lines 11-52, col. 43 line 30 to col. 46 line 36). Further, Joao discloses the diagnostic report containing the healthcare and medical information including data from pulse rate monitors, blood pressure monitors, electrocardiograms, blood-sugar monitors, and scheduled appointments (col. 16 lines 38-65, col. 17 lines 1-12, col. 18 line 66 to col. 19 line 53, col. 20 lines 51-67, col. 24 lines 21-32, col. 26 lines 7-19, col. 32 lines 11-52, col. 43 line 30 to col. 46 line 36). In addition, Joao discloses communicating the diagnostic report and treatment report to a computer or communication device by a requesting party (col. 16 lines 38-65, col. 17 lines 1-12, col. 18 line 66 to col. 19 line 53, col. 20 lines 51-67, col. 24 lines 21-32, col. 26 lines 7-19, col. 32 lines 11-52, col. 43 line 30 to col. 46 line 36). Joao discloses entering the healthcare data obtained from the pulse rate monitors, blood pressure monitors, electrocardiograms, blood-sugar monitors in accordance with the diagnostic report and storing the results in the database (col. 20 line 51 to col. 24 line 32, col. 43 line 30 to col. 46 line 36). Joao discloses after receiving diagnostic report, verifying the diagnostic report and treatment report, and then creating a final diagnostic and treatment report and storing the report in the database, wherein the verification includes generating a treatment response message comprising information that the treatment is correct (col. 20 line 51 to col. 24 line 32, col. 25 line 1 to col. 26 line 43, col. 43 line 30 to col. 46 line 36).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of Joao within the method of Evans and Detjen with the motivation of ensuring healthcare providers have the most recent patient

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information in order to make a proper diagnosis and administer the proper treatments (Joao; col. 1 lines 62-67) and increasing the effectiveness of treatments for patient's by allowing healthcare providers to quickly access and analyze data from remote locations (Evans; col. 2 lines 5-20).

(B) As per claim 16, Evans discloses tracking patient data stored in an electronic medical record in the patient data repository including an appointment with a physician, procedures performed within a health care center, such as a hospital (see Scripps Health San Diego in Figure 24), results of x-rays, and prescribed medications (Figure 24, col. 5 line 1 to col. 6 line 55, col. 7 lines 5-40, col. 11 lines 36-64, col. 12 line 55 to col. 13 line 30).

(C) As per claim 17, Evans discloses using point of capture devices, such as desktop computers, laptop computers, or wireless pen computers, over the world wide web for allowing remote authorized health care providers to access patient records (Figure 24 and col. 12 line 55 to col. 13 line 30).

(D) As per claim 18, Evans discloses allowing health care providers, such as clinics or laboratories, to communicate with the electronic medical records system using modem links and standard v.34 modem devices, such as a US Robotics Sportster 28,800 modem (col. 13 lines 53-56).



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(E) As per claim 19, Evans discloses web browsers communicating with remote web servers using a WAN, the world wide web portion of the Internet, and LAN to allow authorized health care providers to access a patient's electronic medical record and to enter and update the patient's electronic medical record from the patient data repository, wherein a system administrator may have a global password access to any patient data for system maintenance and debug purposes (col. 12 line 55 to col. 15 line 32 and col. 16 lines 43).

(F) As per claim 20, Evans discloses physicians having access to only patient records within their specialty, and nurses and staff may have access to only those patient records within their immediate care using a tiered password system (col. 15 lines 20-33).

(G) As per claim 24, Evans and Detjen fail to expressly disclose using an LCD screen. However, Evans includes using touch screens (col. 14 line 63). It is respectfully submitted that LCD screens are a typically used hardware component for viewing data, and the skilled artisan would have found it an obvious modification to include an LCD screen within the system taught collectively by Evans and Detjen with the motivation of allowing health care providers to remotely view patient data (Evans; col. 1 line 53 to col. 2 line 20).

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(H) As per claim 25, Detjen includes using an SVGA-compatible color monitor (col. 3 lines 25-38). The motivation for combining Detjen within Evans is as discussed above in claim 1, and incorporated herein.

(I) Claims 29 and 30 repeat the same limitations as claims 14 and 16, and are thus rejected for the same reasons given for those claims.

(J) As per claim 31, Joao discloses the database storing information related to any past diagnosis and using the information stored in the database to treat any diagnosis and symptom (col. 16 lines 37-65, col. 19 lines 13-30). Although Evans and Joao do not expressly disclose the medical condition being gastroesophageal reflux disease, it is respectfully submitted that the system taught collectively by Evans and Joao would include treating any medical conditions. The motivation being to ensure patients are treated for all of their medical conditions.

(K) As per claim 32, Evans discloses annotating patient data in the patient chart by a healthcare provider, wherein the health care provider provides instructions such as directions for additional tests and procedures for the patients (col. 7 lines 5-40).

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 14-26 and 29-32 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches a medical care schedule and record aiding system (5,923,018), an interactive method and system for managing physical exams, diagnosis and treatment protocols in a health care practice (6,047,259), network-based system for diagnosing balance disorders (6,383,150), and a method and system for monitoring and treating a patient (6,612,985).

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

8. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 872-9306 or (703) 872-9326 [Official communications]

(703) 872-9327 [After Final communications labeled "Box AF"]

(703) 746-8374 [Informal/ Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor (Receptionist).

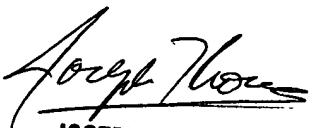
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November 13, 2003

  
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SUPERVISORY PATENT EXAMINER  
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